

**Commission on Child Support
Public Hearing Minutes**

Wednesday, October 27, 2021

1:00 p.m. - 5 00 p.m. MDT

**Lecture Hall, Room 112, Black Hills State University, First Floor (Use North Entrance)
4300 Cheyenne Blvd.,
Rapid City, SD 57703**

Join Zoom Meeting

<https://state-sd.zoom.us/j/97493841985?pwd=UDM2QmM2d1BibTRqMXFpbzRhNFQdz09>

Meeting ID: 974 9384 1985

Passcode: 470830

Commission Members Present: Chairman Justice Scott Myren; Virgena Wieseler, Department of Social Services (DSS) Chief of Children and Family Services; and Terri Williams, Child Support Referee. The following members participated via Zoom: Representative Mike Stevens; Senator Arthur Rusch; Lindsey Riter-Rapp, South Dakota State Bar; Amber Kinney, Custodial Parent; and Rob Simmermon, Non-Custodial Parent.

Commission Members Absent: None

Others Present: Carmin Dean, Nichole Brooks, Marilyn Kinsman, and Kristen Campbell, Department of Social Services (DSS) support staff; Suzanne Starr, Unified Judicial System (UJS); Jeremy Lippert, DSS Director of Legal Services (via Zoom); and Dr. Jane Venohr, Center for Policy Research (via Zoom). Carolyn Waldo was present in person to provide testimony. Eric Chap, Jessica Steidl, Jessie Drury, Andy Braam, Jared Nord, Robert Contreras, Lisa Sittig, Tom Pischke, Matthew Heusser, and Robin Jackson were available via Zoom to provide testimony.

Reconvene / Public Hearing: The Commission on Child Support was called back to order by Chairman Justice Myren at 6:01 p.m. MDT for purposes of the evening Public Hearing.

Chairman Justice Myren stated the purpose of the Public Hearing is for the Commission to conduct its required review of South Dakota's child support guidelines as per state and federal requirements. Discussions during the public hearings will be limited to potential changes to the child support guidelines and statutes. This public hearing is not intended to address individual child support cases, parenting time, or custody concerns. The Public Hearing is an opportunity for the public to provide comments regarding possible changes to the system that may be appropriate to address to the Legislature. The public has had an opportunity to provide testimony during three public hearings that were held to gather input. Meetings were held in Pierre in August and in Sioux Falls in September. The third public hearing is being held today in Rapid City. The public is invited to provide input by writing and mailing comments to DCS at 700 Governors Drive in Pierre, in person, remotely via Zoom, and by providing written comments via e-mail to DCS@state.sd.us. Comments are due November 1, 2021. To get the word out, the Department of Social Services has published public service announcements and press releases, a banner was placed on the DSS website, information was placed in State Bar Newsletters, notices are on the Boards and Commissions portal on OpenSD.gov where information and actions of the Commission are posted. Individuals on Zoom who want to address the Commission should raise your hand. People who wish to testify in person, should sign the sign in sheet. When you testify, state and spell your first and last name and provide your comments.

Chairman Justice Myren called on Eric Chap to provide testimony.

Eric Chap provided testimony via Zoom. Eric stated he has paid close attention to what the Commission is reviewing for child support; he took an interest after attempting to complete a modification. Eric is a custodial parent who resides in Sioux Falls and is raising three kids. He found the process of doing a modification to be unfair. The noncustodial parent is not required to provide documentation and was deemed as not making a full time wage. Eric stated an individual receiving \$181 per child is an excessively low number based upon cost of living these days. Eric has been involved in child support the past 7 years but this was his first modification attempt, admittedly by his own choice. He went to school to increase his income and advanced himself in a career as a registered nurse while raising three children. He still struggles with such low assistance from the other parent. Eric stated it makes him feel like children raised by one parent are left out of extracurricular activities due to the cost. The children are not equal to other children in school, e.g., they do not receive as healthy of meals; do not have adequate clothing. The children may resent the noncustodial parent and feel unworthy to society. Eric stated he hopes the panel looks at the cost of living instead of the minimum amount of child support.

Jessica Steidl provided testimony via Zoom. Jessica stated her comments are in follow up to what Rob Simmermon said at the meeting. Eric also hit on it a little bit when he talked about a custodial parent who goes to school to better themselves and increase their income. Rob Simmermon suggested there be a deviation from student loans. Jessica is not against income models, but stated what happens is that during those seven years, Eric has no idea if the mother of the children increased or decreased her income. It could adversely affect him, e.g., less child support, percentages change for child care expenses, medical, etc. A lot of parents do not need to modify if they are getting along. It comes down to the 2016 regulations. It's going to be a long four years if we don't compute income correctly. Income imputation needs to be correct for the self-employed. The Commission talked about self-support reserve reductions for low incomes today. When child support is reduced due to low income, the other parent has to make that up. Deviations allow for more. It is difficult for someone who makes a decent wage to claim a hardship. When the Commission is setting standards, think about how to help the custodial parent who is impacted by assistance the noncustodial parent would get. The Commission talked about medical being affordable and reasonable, and lower income caps at 8%. Jessica stated she is in litigation about this. Regarding CHIP [Children's Health Insurance Program], Jessica stated her ex makes 18% of the income and she makes 82%. She pays \$552 per month, a single rate of \$205 per month. There are four children and she pays \$87 per child. Of the four children, two are in college, ages 18 and 22, but from the same family. Jessica pays \$174 for their coverage because their father doesn't pay because they are not minors. Jessica and her ex are under shared parenting. Jessica's ex is self-employed and reports \$17,900 on his taxes. In May a referee determined the children would qualify for CHIP and that he could add them to CHIP, but he refused to do that. If the children were on CHIP, they would still be primary under Jessica's insurance policy, and Medicaid would be secondary. Jessica encouraged the Commission to include the family rate that was discussed today, and to divide it out if joint children are in college. If a parent qualifies for CHIP or Medicaid, she asked if it could be stipulated in the order for them to provide it. Unless it is in the court order, there is nothing DSS or anyone can do. Is there a way to help those who are trying to cover all the costs? Jessica questioned if under shared parenting, should the first \$250 of uncovered medical expenses be split at 50/50 and then proportion the income? She pays those bills. No one knows who is responsible so she pays those bills.

Introductions of Commission members were made at 6:21 PM MDT.

Carolyn Waldo provided testimony in person. Carolyn stated she is grateful for this forum and expressed concern for children, parents and family. She is encouraged by accurate fact finding and Dr. Venohr's information. She is also encouraged about [the Commission] paying attention to federal guidelines and what other states are doing. She stated she is available to help; it's important to teach our children fairness and transparency. This generation matters.

Jessie Drury provided testimony via Zoom. Jessie is concerned about having child care included when calculating child support, but not being included when applying for DSS programs. She would like to see legislation around people who do not pay their child support. There should be consequences. If DCS says they can't renew their license, then don't let them renew; need to stick to the consequences and not give them an out. Jessie stated she does not feel Brown County is the same as Pennington County. Eight bills were introduced last year and not one of them dealt with consequences. As a parent paying 100% of the child's needs, she finds it frustrating that the other parent does nothing. They lie on a piece of paper and say they'll pay, but they don't, and DSS does nothing. If a license was revoked, it can be reinstated by DSS, but DSS cannot tell me why they let him off in not paying child support. She would like to see more transparency between DSS and parents and would like a copy of the signed papers. She stated she has done everything possible for two years and it's not working.

Jessica Steidl returned via Zoom to provide additional testimony. She thanked the Commission members for their time and provided comments about second job income from today's Commission meeting. What should be considered a second job? Jessica is involved in a self-employed person who has represented very low income. She voiced belief that overtime is considered as income but does not believe it should be used. There was talk about maintaining a standard of living when parents were married and both worked, and they got a divorce. If they are making a standard wage, it should be acceptable. Jessica does not want children harmed by second income or overtime and agrees we need to ensure kids are cared for. When parents work, suppress income if the parent is not paying child support. We need to ensure malicious activities are not done to reduce income. Jessica voiced concern about not utilizing the annual pay standard anymore. Her ex is self-employed and is making what he wants to make for minimum wage. He can go get a second job and it would not be considered.

Andy Braam provided testimony via Zoom. Andy stated he would like to expand briefly on comments of another person who testified on how to evaluate a person's potential income. He is looking at changing employers and having different opportunities. There is potential in the short term that his income could go up for a short time if he takes on a contracted position, or it's possible his income could go down for a short time. He stated there is a problem with that either way. Potentially, his child support could go up while he is in a temporary position, and he would get stuck on that amount. How do you handle people who are paying child support to grow and navigate their careers? There are shortages in the labor market. He asked the Commission to consider this situation.

Jared Nord provided testimony via Zoom. Jared stated he had a recent experience with child support. He has two kids from one mother and one kid from another mother; he does not live with any of them. With the first two kids and their mother, there was no court order. When figuring the child support obligation for the third child, since there is not a court order stating he pays X amount, he didn't get credit for the support he pays for the other two kids. If he had a court order, he could only take home 40% after expenses to not get credit. It's expensive to not receive and get credit for the other two kids.

Chairman Justice Myren again asked if anyone wished to address the Commission.

Jessie Drury asked if there is 50/50 custody and similar incomes, wouldn't there be no child support for the two of them? Chairman Justice Myren responded that the Commission is not answering questions; just taking comments. Jared Nord stated they split bills, there is no set monetary amount in the order. Using 100% of wage for one child is not correct as he is supporting three kids, not one kid. Terri Williams stated that statutes determine allowable deductions for net income. It is reviewed in proportion between parents, and deviations can come into play. If there is no child support order, and the parents get along, a stipulation for a calculation could be drafted. A deviation could be that there are other children being supported. There is a method, it just needs to be raised during the process. Referees go through the list to see if deviations apply.

Eric Chap returned via Zoom to provide additional testimony. Eric acknowledged agreement with Jessica Steidl regarding the noncustodial parent who is at a low income level, to apply for CHIP stating it would decrease the burden on the custodial parent and the noncustodial parent. Eric brought up child support modifications. In his situation, the noncustodial parent opted not to appear and did not provide accurate income documentation. As a result, a decision was made to stay where they were at. Eric would like to see the noncustodial parent's income. The noncustodial parent works full-time. He paid for a lawyer who subpoenaed the noncustodial parent and the employer, none of which complied with the subpoena. There was nothing to be proven before the judge; it didn't matter that they didn't comply, there was no penalty. It's challenging. Eric paid an equivalent of six months of child support to the attorney, and \$50 for a modification fee. DSS needs a true picture of what income is.

Jessica Steidl returned via Zoom to provide additional testimony. It is a costly burden for a custodial parent or noncustodial parent to prove all this. Jessica is out about \$15,000 while trying to prove her ex's income; she is not getting it back in attorney fees. People need to stand up and fight for themselves. There is no case law; let's make some. There has to be a way to ultimately set a wage for those people who refuse to cooperate and do not provide the wage. The wage can be garnished. She works for the government and has a pension which her ex got a marital share of. When someone is laying low and not providing their income, it will cost more than you are going to get in child support. She is simply exhausted.

Robert Contreras provided testimony via Zoom. He referred to previous discussions regarding student loans possibly being deducted from child support and asked about also including lawyer fees and court fees. It would be less fighting if those costs can be taken out of child support.

Lisa Sittig provided testimony via Zoom. She has an appreciation for what the Commission is doing and stated the Commission has its work cut out for them. She is glad to hear so many different perspectives. The more she listens, the more it seems an algorithm is needed prior to the child support calculator. There are traditional cases that work and then situations where a noncustodial parent is not involved and not paying child support. Then there is the modern situation where both parents are involved, there are duplicative costs, and the noncustodial parent is paying. Lisa would like to see improvement for shared parenting situations, e.g., married, both have jobs, two different but complete households. It is odd for a parent to pay a percentage of the custodial parent's costs and then also pay for the home, groceries, and transportation costs that they are paying already. The noncustodial parent pays for these things in their home and the custodial parent's home. Lisa stated she can see where an order of support order makes sense when there is no involvement; but improvements are needed for shared parenting and physical custody, i.e., if the noncustodial parent has the children four to seven nights a month, he/she still needs a bedroom for those nights.

Tom Pischke provided testimony via Zoom and thanked the Commission members for their diligence. He was looking through the notes from the last meeting from Tom Keller. He voiced liking number 5 regarding abatements, stating Tom Keller hits abatements spot on. Tom stated there is a world of difference having the kids nine overnights vs zero overnights and a world of difference on what is spent. He hopes the Commission makes changes in this area. Representative Stevens had asked for a list of things both the noncustodial parent and custodial parent pays for. Tom will email the list to the Commission. The list includes things like bicycles and scooters as they are not practical to transfer, inclement weather clothing, ice fishing items, hunting boots, swimwear, sports equipment, hygiene items, allergy medications, sunscreen, etc. When his youngest child was six months old the family separated and he bought a high chair, crib, toddler bed, formula, diapers, wipes, toys, beds, vehicle, home, internet, water, heating, cooling, etc. Also has bought hunting and ice fishing equipment and clothing and/or counseling services if the custodial parent doesn't agree. These items are needed whether kids are with him two days or 15 days a month.

Jessica Steidl returned to provide additional testimony. At the end of the day, it's about helping the children, not about sticking it to someone else. She said her ex falls into the lower income level and he should apply for the free or reduced lunch program. Her ex with two kids could make over \$41,000 per year and still get free and reduced lunches, but he refuses. His attorney said that's what his child support is for. It would benefit Jessica to not have to use money to offset school lunches. The noncustodial parent or custodial parent that has the kid for only one day each month is eligible for the program. Schools get more grant money for those that apply. Some parents may be able to help out the noncustodial parent/custodial parent, but they choose not to because they don't have to. Medicaid requires a court order to force enrollment, but the free/reduced lunch program only needs an application.

Andy Braam returned to testify via Zoom. He commented that he has attended a few Commission meetings and doesn't remember anyone saying their child support was too low.

Eric Chap returned to testify via Zoom and stated the reason he is here is because child support is too low; \$181 per child is far too low for this day and age. That amount in itself does not hardly cover anything; it's not enough to make any difference in the care for his children in a given month. Senator Rusch asked Eric if it is the fact it was miscalculated, or if the tables call for too little of support. Eric responded that the tables themselves call for too little of support, and it's likely a miscalculation, too, with the noncustodial parent not providing proof of income. He stated the tables are definitely too low. \$181 per child doesn't do any kind of justice in caring for his children.

Andy Braam returned to provide additional testimony via Zoom. He stated he was looking at the tables and calculations in response to Eric Chap's comments. Without doing too much math, there are situations indeed where someone may only have to pay \$181 per month, but it would be a huge discrepancy in income. That person is likely down in minimum wage level.

Tom Pischke returned to provide additional testimony via Zoom. He asked if there has been any thought or consideration to the average increase in the South Dakota wages/incomes; has South Dakota income/wages increased by 10% in the past five years? If so, how does that relate to increasing the guidelines?

Chairman Justice Myren acknowledged that other people had joined the meeting via Zoom and wished to provide testimony.

Matthew Heusser provided testimony via Zoom. He asked what happens to child support if the child is withheld or if the judge concludes that the custodial parent alienated the children.

Chairman Justice Myren stated the purpose of the meeting is to hear concerns about child support, not for the Commission to answer questions. The Commission is asking for comments from the public. Matthew changed the question to a comment and stated these things should be looked into. If the custodial parent does that and limits the time, they are rewarded financially. He stated there is some extreme end of bell curve where the system encourages bad behaviors.

Robin Jackson provided testimony via Zoom. Robin stated the Commission is focusing on the financial aspect. The actual visitation needs to be far more important; the priority of 50/50 visitation should be a priority vs who gets how much money.

Matthew Heusser readdressed the Commission via Zoom and stated he wanted to reiterate what Robin said. If 50/50 is the default then child support can go away in many cases. The key is to get time with the child. Defaulting to 50/50 in light of abuse charges resolves most issues. He stated that one thing common in high conflict cases is claims of abuse. Some circles refer to it as a silver bullet. The court acts to protect the child; it's better to protect the child and be wrong. A person can get an evidentiary hearing and get things figured out six months down the road, but the parent loses time with the child. Matthew stated he is not sure if the system has ways to address allegations of abuse where the court determines allegations of abuse are unfounded. Abuse is a speculative term in civil court, where a judge says there is no evidence, but it is true, and all evidence points to it. Right now there are no consequence for doing that. The system benefits the person who makes false statements. He stated he wonders what can be done to change the system of behaviors. It causes lopsided custody, support goes up, another leg of the stool is removed for the struggling parent. Is there a way to get time back from time taken unjustly?

Tom Pischke returned to provide testimony via Zoom. He thanked the members for their service and acknowledged it is a big undertaking and time commitment. He thanked the Commission for the time they have spent to make South Dakota better. Tom stated he has made points at previous meetings that he hopes the Commission takes to heart. He has been studying and has taken a deeper dive into the system since becoming a legislator and being affected personally. He shared that he knows the Commission cannot fix everything that's been brought up, but he hopes the Commission will take things that he and others in the public have said to heart. He is excited to see what the Commission moves forward.

Jessica Steidl also returned to provide testimony via Zoom. She stated this year is the first time she heard about the Child Support Commission. She commended members for all they've done, including meeting minutes and all the things being available to the public; it is very much appreciated. She also thanked members for all the opportunities to provide public input and stated it was nice to know our voices have been heard and we've actually made a difference.

Chairman Justice Myren reminded members and the public that the final meeting of the Commission on Child Support will be held in Pierre on November 18 via Zoom or in person. He referred people to the Boards and Commissions portal for meeting information.

Chairman Justice Myren called for the public hearing to end at 8:00 PM MDT.